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LOCHT.116A

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant : Thomas J. Lochtefeld  
Appl. No. : 10/056,893  
Filed : January 24, 2002  
For : SURF TOY ACTION FIGURE  
AND SIMULATED SURFING  
GAME  
Examiner : R. W. Chiu  
Group Art Unit : 3711

**CERTIFICATE OF FAX TRANSMISSION**

I hereby certify that this correspondence and all marked attachments are being transmitted via facsimile to the USPTO Central Fax No. (703) 872-9306 on the date shown below:

December 4, 2006

(Date)

Glen L. Nutter, Reg. No. 46,188

**PETITION UNDER 37 C.F.R. § 1.137(b) FOR REVIVAL**  
**OF A PATENT APPLICATION ABANDONED UNINTENTIONALLY**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

The above-identified application became abandoned for failure to file a timely and proper reply to the Office letter mailed December 29, 2003.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.**

The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional.

Based on the file history, the relevant facts are as follows:

1. On December 29, 2003, the Patent and Trademark Office mailed a final Office Action.
2. On June 1, 2004, Applicant timely mailed an amendment and response to the Office Action, and simultaneously requested a two-month extension of time.
3. On August 12, 2004, the Patent and Trademark Office mailed a Notice of Abandonment;
4. On September 14, 2004, Applicant mailed a Request to Withdraw Notice of Abandonment.
5. On November 1, 2004, the Patent and Trademark Office mailed a Decision on Petition.

In the Decision, the Office acknowledged that Applicant's June 1 response was timely

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filed, but held that the June 1 response was not a proper response to the final Office Action.

6. On December 29, 2004, Applicant fax-filed a Renewed Petition to Withdraw Holding of Abandonment, in which Applicant argued that the November 1, 2004 Decision on Petition was incorrect and did not provide a required detailed explanation for its holding.
7. On August 18, 2005, Applicant fax-filed a Copy of the Renewed Petition to Withdraw Holding of Abandonment, since Applicant's inquiries into the status of the Petition filed December 29, 2004 revealed that there was no record of the petition in the Patent Office file.
8. On September 29, 2006, the Patent Office mailed a paper in which it dismissed the petition filed December 29, 2004, and noted that the Office's "delay in treating this petition is sincerely regretted." In this paper, the Patent Office answered Applicant's arguments in the December 29, 2004 petition, but maintained the holding of abandonment and suggested Applicant seek revival under 37 C.F.R. § 1.137.

The relevant facts set forth above support Applicant's statement that the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional.

The present petition is accompanied by the appropriate petition fee and an appropriate reply. The required reply is filed herewith, and is in the form of an Amendment that places the application in condition for allowance. A continuation application [attorney docket no. LOCHT.116C1] is also being filed (separately) on the same date as the filing of this paper. The continuation application may also satisfy the requirement for a reply.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 12/4/06

By: 

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